



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

December 16, 2009

Mr. Ron Hull, LLC  
265 Hambley Blvd.  
Pikeville, Kentucky 41501

The purpose of this letter is to follow up to our December 9, 2009, meeting in Frankfort, Kentucky. The Environmental Protection Agency (EPA) appreciates the opportunity to continue to discuss the many issues associated with the above referenced permit. This letter will serve as a summary of the issues discussed at the Frankfort meeting. Also, as EPA indicated in the meeting, EPA has an outstanding "15-day notice letter" under section 404(c) of the Clean Water Act (CWA). EPA extended the time frame for Central Appalachia Mining (CAM) to provide a response that addresses EPA's concerns. As we discussed in the meeting, EPA would like to have a response to this letter by February 2, 2010, so EPA can determine how to proceed. Also, we are enclosing the summary from the Atlanta meeting of November 9, 2009. We apologize that this was not sent to you earlier.

Avoidance and Minimization - As we discussed, CAM has indicated that it believes it has avoided and minimized to the maximum it can and have an economically viable mine. EPA understands your position, but would like a response to the minimization proposal that Morgan International has provided (copy enclosed). At this point there are eight remaining fills, and Morgan International's design has proposed five or six fills while maintaining the same level of coal reserves mined. Not having the geological model for this mining site has prevented EPA and its consult from assessing the practicable number of fills and minimizing associated impacts. CAM agreed during the meeting to provide that information to EPA and Morgan International so we can continue our review. In the interim, EPA would like to hear directly from CAM on the feasibility of further minimization given the information we have provided to you.

In addition EPA would like CAM's response to the use of side-filling as an alternative to valley fills. We first discussed this concept in Atlanta, and John Morgan had placed this information on an FTP site for your access and use. As was discussed at the Frankfort meeting, the state of Kentucky and the Office of Surface Mining agreed that side-fills would meet the existing requirements of state law and could be permitted as long as the resulting fill was stable. As John Morgan indicated, the side fill is actually buttressed against the opposite valley and can be constructed in a stable manner. An added benefit is that by moving the existing stream into a newly created valley floor, this could provide for water quality improvements. We understand that there are other issues

such as engineering design and volumetric issues, but would like CAM to provide a response concerning the feasibility of this design.

**Fill Minimization** – During the discussion, it was agreed that CAM would modify its design to comply with the fill minimization requirements associated with the recently developed process between the regulatory agencies in Kentucky. EPA recognizes the memorandum of understanding implementing this provision has not been signed by all the agencies at this time and commits to sending a copy of the signed document as soon as it is available. In the interim, Kentucky Department of Natural Resources has indicated, and all parties have agreed, that CAM should assume it will be signed in its current form.

**Mitigation** - As we discussed at the meeting mitigation, requirements which have been established during the application review would be maintained to eliminate the use of groin ditches for mitigation credit, on site mitigation, conservation easements and the use of in lieu payment for remaining credits for valley fills that are permitted. If the side valley fill is selected as preferred alternative and the constructed channel is provided using appropriate natural stream design, EPA would work with CAM and the Corps of Engineers to determine appropriate mitigation credit for the constructed stream considering replacement value and level of stream function provided by the replacement channel.

**Water Quality** - There were several issues discussed related to water quality, the focus being specific conductance. EPA reiterated that discharges from the project must comply with ambient water quality standards and any permit issued must show that there is no reasonable potential to cause or contribute to an exceedance of state water quality standards. There was a discussion on specific conductance and what steps could be taken to minimize the discharges of elevated levels. One approach was the side-fill approach, discussed above. Several potential Best Management Practices (BMPs) were discussed that came out of the interagency Pittsburgh meeting. These included further avoiding and minimizing the contact between storm water and overburden and mining areas (i.e., managing water through grading and diversion to reduce the level of pollutants in discharges), compacting disturbed overburden and fill areas more tightly to reduce percolation, using the most appropriate ground cover, and restoring vegetation more quickly. In addition to considering these BMPs, CAM agreed to look into other potential BMPs that could address potential downstream water quality impacts to present to the EPA for consideration.

The group discussed the permitting requirements that Peg-Fork had agreed to, including adaptive management and the potential to shut down if water quality criteria were exceeded in the receiving water body. CAM indicated that it would be difficult for their operation to agree to shut down as their economic model depends on mining all areas identified. CAM understands that extensive monitoring requirements would need to be included in any issued permits. This monitoring would be focused on measuring ambient conditions before mining and developing a trend analysis to act as a bellwether to trigger additional adaptive management to protect downstream water quality. CAM

should provide any adaptive management steps that could be taken if downstream water quality impacts are identified to prevent any violation of water quality standards.

There was also a discussion on the proposed advisory that will recommend a level of specific conductance for ambient waters. CAM expressed concern that focusing on specific conductance without knowing what level and what other factors affected benthic organisms seemed premature. EPA explained that the proposal includes a white paper that looks at these affects and other inter-related factors. EPA committed to sharing this with CAM as soon as it is available.

Once again, we appreciate the opportunity to continue these discussions. If there are any questions concerning this letter, please contact me at (404) 562-9354.

Sincerely,

A handwritten signature in cursive script that reads "Duncan Powell" followed by "for TCW".

Thomas C. Welborn  
Chief  
Wetlands, Coastal and Oceans Branch

Enclosures